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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 687

MARY C. HUDSON as Administratrix of the Estate of Herbert A. Hudson, Deceased, *Petitioner,*

vs.

TRANSOCEAN AIR LINES, a Corporation, *Respondent.*

Brief of Respondent Transocean Air Lines, Inc., in Opposition to Petition for Certiorari

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TRANSOCEAN AIR LINES, a Corporation,
Respondent.

Brief of Respondent Transocean Air Lines, Inc., in Opposition to Petition for Certiorari

Respondent Transocean Air Lines, Inc. (hereinafter referred to as Transocean) respectfully files this brief in opposition to the Petition for a Writ of Certiorari heretofore filed by petitioner Mary C. Hudson to review and reverse the judgment of the Court of Appeals for the Ninth Circuit.

STATEMENT OF THE CASE

The decedent Herbert A. Hudson, a co-pilot in the employ of Transocean, was killed on or about July 12, 1953, when an airliner of which he was a crew member crashed while in flight over the Pacific Ocean from Guam to the

United States. Transocean was and is a California corporation, with its principal headquarters at Oakland, California. The decedent was hired in Oakland, based in Oakland, and he and his wife, the present petitioner, were at all relevant times, residents of California. At and prior to the time of Hudson's death a Collective Bargaining Agreement was in effect between Transocean and the Air Carrier Pilots' Association (Non-Scheduled) International, Section 11 of which provided in part as follows:

> "(a) It is agreed that the provisions of the California State Compensation Law shall be applicable to all pilots and co-pilots covered by this Agreement * * *"

Pursuant to the California Workmen's Compensation Act, Transocean had "secured" the rights of its employees under said Act by effecting workmen's compensation insurance.

Following the death of decedent, petitioner, represented by independent counsel, filed an application for death benefits with the Industrial Accident Commission of California and, after a hearing before said Commission, secured an award on December 29, 1953. This award was thereafter, on petitioner's application, paid to petitioner in a lump sum on or about May 18, 1955. Less than two months later, petitioner filed the instant action. (The foregoing appears from the Stipulation of Facts, (Tr. pp. 18-23).)

Upon these facts the trial court held that the Compensation Act remedy precluded any claim under the Death on the High Seas Act[1] and accordingly granted summary judgment in favor of Transocean. This judgment was thereafter affirmed by the Court of Appeals for the Ninth Circuit.[1a]

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1. Act of Mar. 30, 1920, c. 111, 41 Stat. 537, 46 U.S.C. Sections 761-767.

1a. On December 9, 1959, in 272 F.2d 397.

THE QUESTION PRESENTED

Where:

(1) No Federal compensation statute or act of any kind grants or regulates remedies for industrial injuries or death in the airline industry, and

(2) Any and all airline industrial injuries or deaths occurring in flight over any part of the United States, or over any foreign country in the world, are regulated by the applicable State workmen's compensation remedy only;

Is application of such State workmen's compensation remedy (and its exclusive remedy provision) in the case of the death of an airline employee in an air disaster occurring during a flight over water from Guam to the United States barred by reason of the Federal Death on the High Seas Act?

I. Contrary to Petitioner's Assertion, the Question Decided by the Court of Appeals Neither (a) Raises Any Conflict of Authority, nor (b) Does It Involve an Issue of "Wide and General Interest".

The Petition asserts that the question decided by the Court of Appeals "is of wide and general interest" (Petition, p. 6); and that the opinion of the court below "appears to be in conflict with opinions of this Court and with other United States Courts of Appeals" (Petition, p. 7). Each of these statements, we believe, is demonstrably incorrect.

This case is one of two companion cases, the other being *King v. Pan American*.[2] The two cases involved the same issue. In each case summary judgment was granted the respondent in the District Court, which judgment was affirmed on appeal by the Court of Appeals for the Ninth

2. A Petition for Certiorari in *King v. Pan American* is pending before this Court as Docket # 686, following the decision of the Court of Appeals for the Ninth Circuit on August 27, 1959, *reh'g denied* December 8, 1959, 270 Fed. 2d 355.

Circuit. The petitioners in each case have now filed, by the same counsel, substantially identical petitions for certiorari in this Court.

(a) There Is No Conflict Between the Decision of the Court of Appeals in this Case and Any Opinions of this Court, Any Other Court of Appeals, or Any Court in the Land, on the Question Here Involved.

This case and the *King*[3] case are the only cases ever decided which deal with the issue here raised, that is, a challenge to the application of a state workmen's compensation act to an airline industrial injury occurring during a flight over water.

In the *King* case, summary judgment was granted by District Judge Louis Goodman of the United States District Court in San Francisco. This judgment was thereafter affirmed on appeal by a panel of the Court of Appeals for the Ninth Circuit, consisting of Judges Stephens, Jertberg (the author of the opinion) and Hamlin. After the filing of the carefully written opinion of Judge Jertberg in the *King* case on August 27, 1959, a Petition for Rehearing was filed, considered, and thereafter denied on December 8, 1959.

In the instant case, summary judgment was granted by District Judge Albert C. Wollenberg, likewise of the District Court in San Francisco. This judgment was affirmed on appeal by a separate panel of the Court of Appeals for the Ninth Circuit, consisting of Judges Chambers, Orr and Pope, the opinion of the Court noting and relying upon the opinion of Judge Jertberg in the *King* case.

It is to be noted these rulings were unanimous.

We know of no other reported case, either inside or outside the Ninth Circuit, dealing with the exact question here at issue. There is no other reported case which has even remotely similar facts or poses this problem; this is best

3. Cited in footnote 2 *supra*.

evidenced by petitioner's failure to cite any. The authorities cited in petitioner's brief involve completely dissimilar fact situations and legal issues, as will be demonstrated under Topic V of this brief.

(b) This Case Poses No Question of "Wide and General Interest".

Likewise, again contrary to petitioner's statement, it is clear this case is not one of "wide and general interest" but rather (in the words of the Court of Appeals) presents but a "narrow question" (*King v. Pan American*, 270 F.2d 355 at 356). Commercial airliners have been making trans-oceanic flights since the late 1930s, a period of over twenty years. The legal issue which the Court of Appeals settled in its *King* opinion had never come up in any reported case until the two accidents involved in the instant case and the companion *King* case. So far as we know, in no prior case had the personal representative of a deceased airline employee, killed in the course of his employment during a flight over water, ever challenged the application or effect of a State workmen's compensation act under such circumstances.

We submit that a question which has come up in only two cases in over twenty years is scarcely one of such "wide and general interest" as to demand the attention of this Court.

Nor, in view of the ever improving safety record of commercial airlines, can it be said that the rule of law thus settled by the Court of Appeals will ever be of concern to more than a mere handful of people.

II. Petitioner Has Abandoned All Arguments Made in the Courts Below Save for the Argument as to the Death on the High Seas Act.

As noted, the ruling of the courts below was that the California State Workmen's Compensation Act (including

its exclusive remedy provision) applied to the death of an airline employee killed in the scope of his employment where the airplane crash occurred during an over-water flight from Guam to the United States and precluded an action under the Death on the High Seas Act.

In the courts below, petitioner's counsel raised two types of objections to such a result: they contended that this result was (a) forbidden by the United States Constitution and (b) was contrary to the Death on the High Seas Act. The constitutional argument sought to apply the doctrine of *Southern Pacific v. Jensen*[4] to airlines and argued that the accidental and chance contact of an airplane with water after an air disaster in some way—as a *constitutional matter*—made this case one of exclusive admiralty jurisdiction.[5] In affirming *per curiam*, the Court of Appeals relied on its previous *King* opinion; that opinion held the *Jensen* doctrine related to *maritime* matters and operated to invalidate State legislation only where it worked "material prejudice to the characteristic features" of general *maritime* law, noted that the employment here involved was completely *non-maritime* (and in which industrial injuries had never been the subject of regulation by Federal—let alone maritime—law), and therefore held the *Jensen* doctrine totally inapplicable. The non-applicability of the *Jensen* doctrine to the wholly non-maritime employment in the instant case is even clearer than it was to those quasi-maritime employments as to which the line of cases commencing with *Grant Smith-Porter Ship Co. v. Rohde*, 1922,

4. 1917, 244 U.S. 205, 61 L.Ed. 1086. (The *Jensen* case was not cited by name but was inferentially relied upon by citation of the *Knickerbocker Ice* and *Washington v. Dawson & Co.* cases, referred to at page 10 of this Brief.)

5. Such a ruling, placed on constitutional grounds, would of course be beyond the power of Congress to alter, however unsatisfactory its practical working and results.

257 U.S. 469, 66 L.Ed. 321, held that State workmen's compensation acts might properly abrogate otherwise applicable admiralty remedies.

Petitioner's brief in this Court has now abandoned the *Jensen* argument and does not dispute the lower courts' ruling in that regard. While petitioner's brief does state that constitutional provisions[6] are involved, it seems clear this argument is wholly premised on the existence of the Death on the High Seas Act.

Thus the question is, does the Death on the High Seas Act prevent the California State Workmen's Compensation Act (and its exclusive remedy provision) from applying to the death of an airline employee killed in the scope of his employment in an air disaster occurring during a flight from San Francisco to Hawaii, where the airplane crashes into the ocean.

III. What Is Not in Dispute.

Petitioner does *not* dispute that:

(1) There is *no* Federal compensation act for industrial injuries of airline employees. While we do not dispute that Congress could properly enact such an act, petitioner equally does not dispute that Congress has not chosen to do so.

(2) Airline industrial accidents have been uniformly held to be governed by State workmen's compensation acts, even in extra-territorial jurisdiction situations.[7]

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6. Petitioner cites the Interstate and Foreign Commerce Clause (Article I, Section 8, Clause 3) and the Judicial Power Clause (Article III, Section 2, Clause 1) of the United States Constitution.

7. See the following cases cited in the opinion of the Court of Appeals in *King v. Pan American*, 270 F.2d 355 at 360:

Willingham v. Eastern Air Lines, 2 Cir., 199 F.2d 623;

Severson v. Hanford Tri-State Air Line, Inc., 8 Cir., 105

(3) Such extra-territorial jurisdiction of State workmen's compensation acts is valid.[8]

(4) The State of California had ample contacts with the employment here in question to establish jurisdiction under the California State Workmen's Compensation Act.

(5) The Collective Bargaining Agreement in force between Transocean and the union of which decedent was a member expressly provided that the California State Compensation Act should be applicable.

(6) Petitioner on her own initiative and acting through independent counsel filed an application under the California Workmen's Compensation Act and secured an award thereunder, which she thereafter collected in full before instituting the present action.

In short, petitioner does not dispute that had the disaster in question occurred over California, or over any other State of the United States, or over any foreign country, the California Workmen's Compensation Act and it alone would have applied. Petitioner's sole contention is that the Death on the High Seas Act completely changes this result where the crash occurs over an ocean.

Anomalous though this result would be, we concede that Congress could, if it wished, require this result. The question, however, is whether the Sixty-sixth Congress actually did so when on March 30, 1920, it enacted the Death on the High Seas Act.

F.2d 622, c.d. 309 U.S. 660;
Spelar v. American Overseas Air Lines, Inc., 80 F. Supp. 344;
Urda v. Pan American Airways, 5 Cir., 211 F.2d 713;
Duskin v. Pennsylvania Central Air Lines, 6 Cir., 167 F.2d 727, c.d. 335 U.S. 829.

8. See *Alaska Packers Assn. v. Industrial Accident Commission of California*, 1935, 294 U.S. 532, 79 L.Ed. 1044, *Cardillo v. Liberty Mutual Insurance Co.*, 1947, 330 U.S. 469, 91 L.Ed. 1028

IV. The Death on the High Seas Act Does Not Bar Application of State Workmen's Compensation Acts to Airline Industrial Injuries.

It must be stressed that, while petitioner's counsel purport to rely on the Death on the High Seas Act, at no point in their brief do they discuss (a) the language of Section 7 of that Act,[9] (b) the general purpose for which that Act was enacted, or (c) the legislative history of that Act. Nor do petitioner's counsel challenge in any specific way the discussion of either the District Court or the Court of Appeals, in their respective opinions, concerning the language, general purpose and legislative history of that Act.

That studied and prolonged silence, before three Courts, is, we submit, the most eloquent refutation of petitioner's position in this case.

As noted in the *King* opinion of the Court of Appeals, not only does the Death on the High Seas Act *not* purport to supersede State workmen's compensation remedies, but rather: "Section 7 of the Act * * * expressly provides that the provisions of any State statute giving or regulating rights of action or remedies for death shall *not* be affected by the Act" (270 Fed. 2d 355 at 362, emphasis added.) The language in Section 7 so referred to was no mere inadvertence of Congress, but was expressly placed therein by an amendment, known (after its author, Congressman Mann,) as the Mann Amendment, for the express purpose of insuring that State jurisdiction should *not* be destroyed.

The general purpose of the Act (as stated by District Judge Goodman in his *King* opinion) was "to fill a void in the maritime law and provided an admiralty remedy for wrongful death where none had existed before." (166

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9. "The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter. * * *"

Fed. Supp. 136 at 139.) The purpose was to remedy the anomalous defect of the common law, whereby a negligent defendant who had injured another and was liable for said injuries if the victim lived, escaped liability altogether if the victim died. On land, this defect had been remedied by statute by most state legislatures, but the common law rule had not been changed in admiralty. This anomaly in admiralty law was vivid in the minds of Congress, in view of the litigation arising out of the then recent sinking of the Titanic. The purpose of the Act was *not* to regulate recovery for industrial injuries in any employment—let alone the airline industry (which was then not even conceived of)—nor to supersede State workmen's compensation acts in any way.

Pertinent portions of the legislative history which clearly demonstrate both the general purpose of the Death on the High Seas Act and the specific purpose of the Mann Amendment, quoted from the debate in the House of Representatives on March 17, 1920 (59 Congressional Record, pp. 4482-4487), are set forth in Appendix A to this brief.

As noted in the *King* opinion of the Court of Appeals, the attitude of Congress in the period in which the Death on the High Seas Act was enacted was extremely friendly to the maximum possible application of State workmen's compensation acts. This is made clear by the Acts of the 65th Congress in 1917 and of the 67th Congress in 1922, dealt with in *Knickerbocker Ice Co. v. Stewart*, 1920, 253 U.S. 149, 64 L. Ed. 834, and *Washington v. Dawson & Co.*, 1924, 264 U.S. 219, 68 L. Ed. 646 (and referred to by petitioner in her brief at pages 7 and 8).[10]

[10] The holdings of these two cases are of course totally inapplicable here, for the reasons discussed by the Court of Appeals in the *King* case. Both dealt with essentially maritime employments a bargeman in the *Knickerbocker Ice* case and stevedores and other

In the light of the foregoing, petitioner's contention that the California State Workmen's Compensation Act is inapplicable because Congress so intended can be seen to be fanciful.

Petitioner seeks to emphasize the locality of the accident, and to ignore or slur over the (non-maritime) nature of the work being performed. Petitioner seeks to distinguish the prior opinions of this Court cited by the Court of Appeals in *King (Grant Smith-Porter Ship Co. v. Rohde*, 1922, 257 U.S. 469, 66 L.Ed. 321, *Millers' Indemnity Underwriters v. Braud*, 1926, 270 U.S. 59, 70 L.Ed. 470, *Alaska Packers Association v. Industrial Accident Commission*, 1928, 276 U.S. 467, 72 L.Ed. 656, *et al.*) as "ship-shore" or "territorial waters" cases. Petitioner seems to argue that a maritime locale, without regard to the maritime or non-maritime nature of the work being performed, excludes operation of State workmen's compensation laws.

This ignores the fact that the decisive consideration in the *Rohde*, *Braud* and *Alaska Packers* cases *et al.* was *not* the question of maritime locality (indeed it was conceded in each that the locality was sufficiently maritime for admiralty jurisdiction), but the *nature of the work* and whether it was "essentially maritime" or not. It was because of the nature of the work that this Court held, in the cases cited, that the State workmen's compensation acts abrogated the otherwise applicable admiralty remedies. This is best demonstrated by the language of Chief Justice Taft in *London Guarantee & A. Co. v. Industrial Accident Commission*, 1929, 279 U.S.

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workmen "actually engaged in maritime work" in *State of Washington v. W. C. Dawson & Co.*; in both, the *Jensen* doctrine was held to preclude State regulation of industrial injuries as to such employees "engaged in maritime work".

The completely non-maritime nature of the employment involved here is of course tacitly conceded by petitioner's brief.

109, 73 L. Ed. 632, in discussing and explaining the *Rohde*, *Braud* and *Alaska Packers* cases. In pointing out that in those cases State workmen's compensation acts were properly held to exclude otherwise applicable admiralty remedies, Chief Justice Taft said:

> "[Those cases] may be said to be of an amphibious character. They have an admiralty feature about them *in the locality* where they occurred, although even this is doubtful with respect to the Alaska case. But the contract in the Rohde Case was nonmaritime, the ship was incomplete, and being completed under a nonmaritime contract, both parties had made a nonmaritime contract with reference to their liabilities and not in contemplation of the admiralty law. The Braud Case was one of a maritime tort. *But it had no characteristic feature of the general maritime law except locality*, and it was very like in its relation to the state law to the Rohde Case. *The employment was not maritime, and the transaction and the circumstances thus seemed to have but one characteristic that was maritime.* (279 U.S. at 121, 73 L. Ed. at 635-636; emphasis added.)"[10a]

A further and independent reason why petitioner cannot attempt to rely on the Death on the High Seas Act to avoid the application of the California Workmen's Compensation Act (and its exclusive remedy provision) lies in the fact that Section 1 of that Act does not purport to create a cause of action in *every* case where a death occurs on the high seas due to negligence, but instead limits such to claims "against the vessel, person or corporation which would have been liable [if] death had not ensued." The cause of action lies only where the decedent himself might have recovered had he

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10a. In our case, unlike the *Rohde*, *Braud* and *Alaska Packers* cases, the decedent's employment was not even "amphibious", but was *wholly* non-maritime.

survived. (See *Tiffany, Death by Wrongful Act.*, 2d Ed. Par. 63, pp. 132-133.)

It is clear that had decedent Hudson sustained only personal injuries he could *not* have sued Transocean on any theory of alleged negligence or wrongful conduct. His sole right would have been to compensation, payable, not on the basis of anyone's fault, but by reason of the industrial nature of the injury.

V. None of the Cases Cited by Petitioner Is Either Legally or Factually in Point.

Petitioner's counsel cite in support of their contentions but five cases.[11] These are:

Hahn v. Ross Island Sand & Gravel Co., 358 U.S. 272, 3 L. Ed. 2d 292, 79 S. Ct. 266;

The Tungus v. Skovgaard, 358 U.S. 588, 3 L. Ed. 2d 524, 79 S. Ct. 503;

Pope & Talbot Inc. v. Hawn, 346 U.S. 406, 98 L. Ed. 143, 74 S. Ct. 202;

Middleton v. Luckenbach S.S. Co., 70 Fed. 2d 326;

Turner v. Wilson Line of Mass., 242 Fed. 2d 414.

None of these cases is either factually or legally in point.

Of these five cases, only *one* even involved a claim against an employer arising out of an employee's industrial injury, or the effect of a State workmen's compensation act. This was *Hahn v. Ross Island Sand & Gravel Co.*, which involved a waterfront employee "injured while working on a barge in navigable waters" (358 U.S. 272 at 274, 3 L. Ed. 2d 292 at 294) rather than an airline employee. This case, however, did not involve a death claim sought to be founded

11. Other than the *Knickerbocker Ice* and *Dawson* cases, discussed above.

upon Federal law, but rather a personal injury claim founded upon Oregon State law. *Concededly* the Oregon State Compensation Act did *not* apply due to the defendant employer's knowing failure and refusal to comply with the provisions of that Act.[12] This Court held that the plaintiff's claim under State law was not barred by the provisions of the Federal Longshoremen's Act. The case did not even by dictum in any way discuss the situation presented here. How a case which did not involve airline employment, did not involve any death act, and in which State law, rather than Federal law, was held to govern, in any way aids petitioner in the instant case we fail to see.

The remaining four cases not only (1) do not involve airline employees, and (2) do not involve the effect of State workmen's compensation acts, but they (3) do not even involve claims against employers arising out of industrial injuries sustained by employees. The suits involved in each case were brought against third persons, not against employers. The *Haavn* case did not involve a death action at all, *The Tungus* mentioned the Death on the High Seas Act only in casual discussion, noting its inapplicability, and the remaining two cases which did actually in some way involve the Death on the High Seas Act are inapposite on their facts and legal issues.

The *Haavn* case held that a carpenter, sustaining personal injury while engaged in repair work on a ship berthed at a pier on the Delaware River, might recover against the shipowner (who was not the plaintiff's employer) under the doctrine of unseaworthiness; the plaintiff's work was held to fall within the rule of the *Sieracki* case,[12a] which extended

12. Unlike Transocean in the instant case, which fully complied with the requirements of the California Workmen's Compensation Act.

12a. *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 90 L.Ed. 1099.

the warranty of seaworthiness to stevedores and other persons not members of the ship's crew but engaged upon ship's work. The opinion of this Court specifically noted that the plaintiff "was injured on navigable waters while working on a ship to enable it to complete its loading for safer transportation of its cargo by water." (346 U.S. 406 at 409, 98 L. Ed. 143 at 151) In answer to the contention that the *Sieracki* doctrine extended the warranty of seaworthiness only to stevedores and that Hawn was not a stevedore, the Court answered:

> "Sieracki's legal protection was not based on the name 'stevedore' *but on the type of work he did* and its relationship to the ship and to the historic doctrine of seaworthiness." (346 U.S. 406, 413, 98 L. Ed. 143 at 152-153, emphasis added.)

In the instant case, involving an airline employee and an airplane accident, we have no "historic doctrine of seaworthiness" and no ship's repair work performed aboard a ship floating upon navigable waters. In our case the "type of work [the decedent] did" was completely non-maritime and unrelated, factually, historically or in any other way to the maritime work involved in *Hawn*. It seems clear this case is not in point here.

In *The Tungus* suit was brought for the death of an oil company maintenance man killed aboard a ship docked in the port of Bayonne, New Jersey; the suit was brought, not against the decedent's employer,[13] but against the shipowner. While this Court's opinion did note in passing that the Death on the High Seas Act did not apply since the death occurred in territorial waters, it is clear that this Court

13. State Workmen's Compensation benefits had been secured from the employer. See footnote 4 to the opinion of this Court, 358 U.S. 588 at 590, 3 L.Ed. 2d 524 at 527.

was referring to Section 1 of the Act (46 U.S.C. Section 761) rather than Section 7 as Petitioner claims.[14]

The issues in *The Tungus* were: (1) Were the Federal Courts, in granting relief, restricted by the scope of the New Jersey Wrongful Death Act, and (2) Had the lower Courts properly construed that Act. The case did not remotely involve any issue comparable to the one decided here.

The opinion of this Court in *The Tungus* used the following language:

> "The legislative history of the Death on the High Seas Act discloses a clear congressional purpose to 'leave unimpaired the rights under State statutes as to deaths on waters within the territorial jurisdiction of the States.' S Rep. No. 216, 66th Cong. 1st Sess. 3; HR Rep. No. 674, 66th Cong. 2d Sess. 3. The record of the debate in the House of Representatives preceding passage of the bill reflects deep concern that the power of the States to create actions for wrongful death in no way be affected by enactment of the federal law. 59 Cong. Rec. 4482-4486." (358 U.S. at 593, 3 L. Ed. 2d at 529.)

It is obvious that neither the facts nor the holding of this Court in *The Tungus* in any way involved the operation

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14. The Court's language is as follows:

"We begin as did the Court of Appeals with the established principle of maritime law that in the absence of a statute there is no action for wrongful death. The Harrisburg, 119 US 199, 30 L ed 358, 7 S Ct 140. Although Congress has enacted legislation, notably the Jones Act,[2] and the Death on the High Seas Act,[3] providing for wrongful death actions in a limited number of situations,[4] no federal statute is applicable to the present case; Skovgaard was not a seaman,[5] and his death occurred upon the territorial waters of New Jersey.[6]"

Footnote 6 reads as follows:

"[6]The Death on the High Seas Act creates a right of action only for a 'wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State • • •' 46 USC Sec. 761."

of State statutes (let alone State workmen's compensation acts) beyond the territorial waters of the State and that this Court in no sense construed, or had occasion to construe, the meaning of Section 7 of the Death on the High Seas Act in that regard. If the language of this Court quoted above, however, be deemed to cast any light on this question, we submit it favors the position of Pan American, rather than of petitioner. The Senate Committee Report quoted in the Court's opinion related to the *original* draft of the Death on the High Seas Act *as reported from committee*, Section 7 of which would by implication have eliminated operation of State statutes beyond State territorial waters. It was because Congressman Mann objected to such elimination that he introduced the Mann Amendment so that (in the words of the *Tungus* opinion): "The power of the States * * * [would] *in no way* be affected by enactment of the Federal law." (Emphasis added.) The Mann Amendment, of course, was adopted and is embodied in Section 7 in its present form.

Middleton v. Luckenbach S.S. Co. involved the death of a seaman in a collision between two ships on the high seas. The sole legal question presented was whether the decedent's mother was barred from recovery under the Act (which authorizes recovery for the benefit of a decedent's "parent") because the decedent was her illegitimate, rather than her legitimate, son. The Court held that the Act protected the parents of both legitimate and illegitimate children. How this case "conflicts" with the opinion of the Court of Appeals in the instant case is impossible for us to see.

In *Turner v. Wilson Line of Mass.*, an employee of a repair company, aboard a ship which had run aground in Boston Harbor, died of carbon monoxide poisoning, and his personal representative brought suit against the owner of the grounded ship. The District Court dismissed the action and the Court of Appeals affirmed, pointing out the Jones

Act did not apply since the decedent was *not* the defendant's employee; the Death on the High Seas Act did not apply since the death occurred in territorial waters; and the federal court lacked jurisdiction as to any claim based on a State wrongful death statute (since both plaintiff and defendant were citizens of Massachusetts, see 242 Fed. 2d at 415-416). Here again, we fail to see how the holding of this case "conflicts" with the holding of the Court of Appeals for the Ninth Circuit in the instant case.

CONCLUSION

We submit that Petitioner has failed to show any error in the rulings of the Court below and has further failed to show any conflict whatever between the rulings of the courts below and the opinions of this Court or any other court. Far from the question being one of "wide and general interest", as claimed, this "narrow question" (to borrow the words of the Court of Appeals) has come up but twice in over twenty years. The law has been settled through the definitive opinions of the unanimous courts below. In view of these considerations, no reason exists for this Court to grant certiorari.

The Petition for Certiorari should be denied.

Dated: at San Francisco, California
March 7, 1960

Respectfully submitted,

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(Appendix Follows)

Appendix

Extracts from the Discussion in the House of Representatives on March 17, 1920 on the Proposed Death on the High Seas Act (59 Congressional Record, Pages 4482-4485, March 17, 1920; emphasis added.):

Chairman Volstead began the discussion:

"Mr. Speaker, this legislation is an old friend that has been pending in Congress a great many years. It has been passed from time to time, sometimes in the House and sometimes in the Senate. The bill, if you will examine the report made upon it, *is intended to supply a defect which now exists under what was the common-law* rule as to actions affecting injuries that might be caused through the wrongful act or neglect of persons engaged in shipping on the high seas. If the injury did not result in death, a cause of action exists; the injured person might go into a court of admiralty and secure relief, but if death resulted courts applied the old common-law doctrine that the cause of action dies with the person; that is, the cause of action was personal and did not survive the injured party.

"The object of this bill is to give a cause of action in case of death resulting from negligence or wrongful act occurring on the high seas. Nearly all countries have modified the old rule which did not allow relief in the case of death under such circumstances. Under what is known as Lord Campbell's act, England many years ago authorized recovery in such cases. France, Germany, and other European countries now follow this more humane and enlightened policy and allow dependent parties to recover in case of death of their near relatives upon the high seas.

"This bill was introduced in the Senate, has been passed by that body, and is substantially in the form in which it passed this House in the Sixty-fourth Congress. In the Sixty-fifth Congress this same bill, or a very similar one, was reported from the Judiciary

Committee, but did not reach consideration on the floor of the House. * * *" (Page 4482, cols. 1-2)

"Mr. Mann of Illinois. Now, I do not know whether I am right or wrong about it, because I have not examined the report on this bill carefully as reported this time. But I remember this bill very distinctly in previous Congresses, and my impression, which very likely may be erroneous, is that the purpose of the bill was to confer jurisdiction in certain cases of death where no jurisdiction now exists. I was under the impression that *the bill was not intended to take away any jurisdiction which can now be exercised by any State court* * * *" (Page 4484, col. 1)

* * * * * * *

"Mr. Mann of Illinois. We give a certain class of rights under this act. If this act as originally drawn by the admiralty lawyers was intended for the purpose of taking away jurisdiction now conferred by State statutes, it ought to be very critically examined." (Page 4484, col. 2)

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"Mr. Mann of Illinois. They would not be required to comply with the laws of a State. The gentleman's proposition [i.e., the bill *before* the Mann amendment] would take away the right of the State to apply its own laws." (Page 4484, col. 2)

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"Mr. Mann of Illinois. That is the way it will be left, *so that the act will not take away any jurisdiction conferred now by the States.*" (Page 4485, col. 1)